

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS and
D. ETTA WILCOXON,

Plaintiffs,

-v-

Case No. 17-cv-11742

DETROIT DOWNTOWN DEVELOPMENT
AUTHORITY and DETROIT BROWNFIELD
REDEVELOPMENT AUTHORITY,

Defendants.

PLAINTIFFS' EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER
OR PRELIMINARY INJUNCTION

BEFORE HONORABLE MARK A. GOLDSMITH

Detroit, Michigan, Tuesday, June 6th, 2017.

APPEARANCES:

FOR THE PLAINTIFFS: ANDREW A. PATERSON, JR.
42350 Grand River Avenue
Novi, MI 48374

FOR THE DEFENDANTS: DENNIS K. EGAN
400 Renaissance Center
Suite 3400
Detroit, MI 48234

David B. Yarbrough, CSR, FCRR
Official Court Reporter
(313) 410-7000

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WITNESSES:

NONE

EXHIBITS

NONE

1 Detroit, Michigan.

2 Tuesday, June 6th, 2017.

3 At or about 1:53 p.m.

4 -- --- --

5 THE CLERK OF THE COURT: Please rise. The United
6 States District Court for the Eastern district of Michigan is
7 now in session, the Honorable Mark Goldsmith presiding. You
8 you may be seated.

9 The Court calls case number 17-11742, Robert Davis,
10 et al versus Detroit Downtown Development Authority, et al.
11 Counsel, please state your appearances for the record.

12 MR. PATERSON: Andrew Paterson on behalf of the
13 plaintiffs.

14 MR. EGAN: Dennis Egan on behalf of the defendants.

15 THE COURT: All right. Good afternoon. We have
16 scheduled this hearing on plaintiff's emergency motion for a
17 temporary restraining order or in the alternative, motion for
18 preliminary injunction. It's docket number eight. I'll alert
19 you that we are probably going to get interrupted by a criminal
20 matter that has been previously scheduled that we'll need to
21 take up at some point, but in any case, we'll start with this
22 case now. Mr. Paterson, you want to lead off?

23 MR. PATERSON: Thank you and initially I would like
24 to thank the Court for scheduling this matter on such an
25 accelerated schedule. I appreciate it. The plaintiffs have

1 brought this action in Federal Court seeking the Court to issue
2 I think a preliminary injunction rather than a TRO at this
3 point since we have opposition here enjoining the defendants
4 from proceeding without first obtaining a vote of the
5 electorate, a vote of the plaintiffs as part of the electorate
6 with respect to the changed use in the millages that are being
7 proposed to be utilized by the DDA in its expanded plan in the
8 Brownfield Redevelopment Authority and as part of that plan.

9 The plaintiffs' right to vote I think is fairly
10 clearly a fundamental right that can be enforced under the U.S.
11 Constitution and provides the basis for us appearing in your
12 jurisdiction. I think the standing issue is also appropriate
13 in and recognized by the Michigan Supreme Court in the South
14 Haven case that we cited giving any taxpayer standing to
15 challenge issues with respect to the use of tax funds.

16 I would first indicate to the Court that the City
17 Council in defendants' brief they filed this morning indicated
18 that they would be adjourning their vote today to June 20th so
19 the timing that we requested when we filed this was with
20 respect to the possible vote by the City Council today. It is
21 as acknowledged by defendants now been adjourned to the 20th.
22 They did pass some preliminary Brownfield Redevelopment
23 Authority tax abatement and matters of that sort, but the
24 fundamental issues with respect to the capture which has not
25 happened yet of the increased millage, that has not occurred

1 and it's something that will occur over a 30-year period
2 depending on when it initiates.

3 THE COURT: I want to understand a little bit better
4 how this implicates the right to vote. I've not had a chance
5 to fully study everything that's been filed so if I miss
6 something, please let me know that, but I'm trying to
7 understand your theory. As I understand it, you're contending
8 that the defendants are somehow going to be using millage
9 proceeds in a way that is not authorized.

10 MR. PATERSON: The -- the -- the Michigan Supreme
11 Court case that indicates that the plaintiffs here have a right
12 to vote with respect to the proposed usage in capture of the
13 millage is the South Haven case and in that case, if I can even
14 just read from it briefly, I think the Court lays out why these
15 plaintiffs have a right to vote with respect to that. I'm then
16 quoting from South Haven v. Van Buren County Board of
17 Commissioners, 478 Mich, 518, 2007 case. The Michigan Supreme
18 Court indicated and I'll quote it; "Under the General Property
19 Tax Act, MCL 211.1 et seq, when a millage proposal is committed
20 to the electorate for approval, the ballot must fully disclose
21 each local unit of government to which the revenue from the
22 millage will be disbursed and must state" and then in smaller
23 quotes, "a clear statement of the purpose of the millage."

24 "This statute does not expressly preclude using for one
25 purpose tax revenues specifically approved for a different

1 purpose, however a fundamental rule of statutory construction
2 is that the Legislature did not intend do a useless thing. If
3 funds that voters approved for the purpose stated on the ballot
4 could be redirected to another purpose without seeking new
5 approval, there would be no reason for including the purpose on
6 the ballot. Indeed, voters would be lulled into voting for a
7 millage for a popular purpose only to have the funds then used
8 for something they may well have never approved. This is
9 contrary to the General Property Tax Act. While no court has
10 warrant to violate MCL 224.20b" and that's the statute that was
11 involved in that particular case, ordering distribution is
12 contrary to the statute, "it likewise may not violate 211.24f"
13 which is this, the section that has the ballot have to state
14 the purpose, "by ordering those funds to be used for a purpose
15 not approved by the voter."

16 So I think that's the specific section. There's no
17 issue today whether these taxes if captured can be used for the
18 TIF purpose that the DDA seeks to utilize them for and the
19 Brownfield Redevelopment seeks to utilize them for.

20 THE COURT: So is your theory then any time there's a
21 claim that the provisions of some measure that's been adopted
22 by voters has not been complied with, that that implicates the
23 right to vote?

24 MR. PATERSON: The Michigan Supreme Court takes that
25 position. I am simply echoing their decision.

1 THE COURT: Well, where do they talk about the right
2 to vote here? They're saying that it violates Michigan law to
3 use proceeds in a way that is not authorized under that law
4 that was approved by the voters and that makes sense, but where
5 does it say here that that has something to do with the right
6 to vote which is a separate issue?

7 MR. PATERSON: The defendants are purporting to
8 capture and use funds that were dedicated in the purpose
9 section of the ballot for operating purposes for the schools
10 and for operating purposes for the parks. They're proposing to
11 use it for something other than that, a different purpose.
12 It's -- that falls specifically into the quotation from the
13 South Haven case, indeed voters could be lulled into voting for
14 a millage for a popular purpose only to have the funds then
15 used for something they may well have never approved, this is
16 contrary to the General Property Tax Act. While no court has,
17 and they continue on.

18 THE COURT: No, I heard what you read and I'm reading
19 it now on the screen, but it's another step in the analysis to
20 say that that implicates the right to vote. The right to vote
21 typically has been litigated in a context of people who are
22 deprived of the right to vote base on invidious reasons; race,
23 religion, ancestry, whatever. You're making a different kind
24 of argument than that. It's not that somebody has been
25 deprived of the ability to actually cast a ballot, you're

1 saying that somebody hasn't complied with the law that was
2 adopted and that that therefore contradicts the will of the
3 voters and therefore that violates the right to vote somehow.
4 That's not obvious to me and I would like you to tell me if
5 there's a case that says that when somebody misuses funds or in
6 any way acts contrary to a measure that's been adopted by
7 voters, that that actor has somehow violated the right to vote
8 of those who voted in the election.

9 MR. PATERSON: I think that the Michigan Supreme
10 Court in the South Haven case recognizes as a fundamental right
11 the right of the voters to seek in this case an injunction
12 commanding the body, the public body that is intending to
13 utilize it in a different manner, to require them to take it to
14 a vote of the voters. It's a fundamental Michigan right to
15 have public bodies comply with the law. The South Haven case,
16 I'm reminded by my client does say if they want -- if a public
17 body wants to use it for a different purpose, they must get a
18 vote.

19 THE COURT: Go ahead.

20 MR. PATERSON: And no vote has been offered. The DDA
21 has made no effort. They've only taken it to the City Council.
22 They want the City Council to approve it and then they would
23 like to sell bonds to reimburse the private money that's been
24 advanced for these 34 and-a-half or 36 million I see now in
25 improvements and they've made no provision whatsoever to permit

1 the electorate to have a vote on the change in the use of the
2 tax revenue generated from the school millage and from the
3 parks millage.

4 THE COURT: Now there was a response filed by
5 defendants recently. Did you review that?

6 MR. PATERSON: Just now.

7 THE COURT: Do you have any response to the points
8 that the defendants were making?

9 MR. PATERSON: I do and I'd like to, you know, have
10 an opportunity to look at it a little longer and make more
11 response, but I think it raises a couple issues that really
12 aren't in dispute. The plaintiffs do not dispute that the DDA
13 and the Brownfield Redevelopment Authority have the authority
14 to capture these taxes. That's not an issue. That's clearly
15 permitted under the TIF statute and the exemption for libraries
16 is simply that, that they can't use library funds. Well, that
17 doesn't mean they can't use school funds. They can in fact use
18 school millage funds or parks funds, but they first must seek
19 the vote of the electorate approving that different use from
20 what was originally proposed by the electorate or approved by
21 the electorate.

22 THE COURT: Well, when did this first surface that
23 the funds were going to be used in this fashion?

24 MR. PATERSON: The proposed amendment to the plan, to
25 the catalyst plan first I think appeared after some

1 negotiations apparently between the two private developers that
2 are going to utilize the Little Caesar Arena, the Pistons and
3 the Ilitch organization. That was in January of this year.

4 THE COURT: So that's when it surfaced that these
5 defendants were going to be utilizing the funds in the manner
6 that you're objecting to?

7 MR. PATERSON: One minute.

8 (Pause)

9 MR. PATERSON: I'm told by my client --

10 THE COURT: Just a minute. Just a minute.

11 (Pause)

12 THE COURT: Go ahead.

13 MR. PATERSON: I'm not certain, I think it's Exhibit
14 4 or 5, D, Exhibit D which is the DDA minutes from April 19th,
15 2017 approving minutes with respect to the enhanced catalyst
16 plan so that's when it arose. I think negotiations prior to
17 that were public and I'm aware of them, but it was the DDA in
18 April, and April 19th specifically in their minutes, Exhibit D,
19 as to when they did that.

20 THE COURT: But you say it was public before that?

21 MR. PATERSON: The negotiations to do it were public
22 before that. I don't think the parties, the private parties
23 had reached an agreement until some time shortly before that
24 and maybe even after that, but the DDA took action April 19th.

25 THE COURT: Okay, go ahead.

1 MR. PATERSON: With respect to the question you asked
2 about the right to vote on these matters, I would like to refer
3 to the South Haven case again where they stated quote "The
4 clear import of MCL 211.24f indicates taxes levied pursuant to
5 a millage proposal may not be spent contrary to the express
6 will of the voters," which I think is a given, and I would add
7 to that that the Revised School Code specifically directs the
8 use of tax levied monies and it says under Section 380.1216,
9 except as provided in the Revised Municipal Finance Act which
10 is really not relevant here as provided in Section 15 of the
11 State School Aid Act or the purposes authorized under 1211(5),
12 money raised by tax shall not be used for a purpose other than
13 that for which it was raised without the consent of a majority
14 of the school electors of the district voting on the question
15 at a regular or special school election and I would indicate
16 that my plaintiff, D. Etta Wilcoxon, is an elector in the city
17 of Detroit which includes the school district and it is her
18 right to vote that is set forth in the Revised School Code that
19 they are purporting to not address or not permit. Without the
20 consent of a majority of the school electors of the district
21 voting on the question at a regular or special school election,
22 money cannot be used for a purpose other than that for which it
23 was raised and that's precisely what's happening in this
24 particular instance. That is the right to vote that is being
25 frustrated by the efforts of the DDA to raise the money without

1 getting approval first from the electorate.

2 THE COURT: So let me to go back to the question I
3 asked you earlier then. So is any action taken by anybody
4 that's not compliant with a measure adopted by voters an action
5 that implicates the right to vote under your theory?

6 MR. PATERSON: It certainly does under the school
7 millage because that's specifically what the Michigan Supreme
8 Court held, that you can't change the purpose for school
9 millage without a vote of the electorate.

10 THE COURT: Now you were saying that Ms. Wilcoxon was
11 a voter in that election?

12 MR. PATERSON: She is. She is a city of Detroit
13 resident.

14 THE COURT: What about Mr. Davis?

15 MR. PATERSON: Mr. Davis is a Wayne County resident
16 in Highland Park.

17 THE COURT: So did he vote in that election?

18 MR. PATERSON: He did not vote in the school's
19 election. He did vote according to his affidavit which I think
20 is Exhibit A in the Brownfield redevelopment millage that was
21 approved in 2012 I believe.

22 THE COURT: Okay, go ahead.

23 MR. PATERSON: The capture of these revenues has not
24 occurred, the City Council hasn't acted yet, but I'm seeking
25 here the Court's injunction against the defendants from so

1 proceeding until they have first received the approval of the
2 electorate with respect to both the parks millage and the
3 schools millage as required under South Haven, the Michigan
4 Supreme Court and under Michigan General Property Tax Act as
5 well as the Revised School Code. They're perfectly able to
6 utilize those funds once they receive the approval of the
7 electorate. This isn't the distinction that they raise in
8 their brief that I think is in a posit, but the library funds
9 for example, if they were seeking to use or capture any
10 increase in millage for library funds, they could not do that.
11 The TIF Act expressly exempts library millage. It doesn't
12 exempt the school millage. They are entitled to use it. They
13 are entitled to capture the parks millage, but they first must
14 under South Haven give a vote to the electorate to approve
15 those usages.

16 THE COURT: Now there's an argument made in the
17 defense response about irreparable harm and the argument is
18 that it's really a dispute that's resolvable by money if it
19 turns out that the defendants have somehow acquired funds that
20 they are not entitled to under the law, they could be ordered
21 to return the funds. What's your response to that?

22 MR. PATERSON: The right to vote has got not a price
23 on it. It's ir -- I mean, it's a fundamental right under the
24 Constitution and enforceable by the federal court.

25 THE COURT: Well, those statements are usually made

1 in connection with people who don't get to vote for reasons
2 that are unlawful and when they have been deprived of their
3 right to cast a ballot, there's nothing you can do afterwards
4 that would compensate them for that, but in this case your
5 argument turns on the misuse of funds. That's eminently
6 solvable with money because if the funds were misused, they
7 should be replaced. I don't see how that ends up compromising
8 somebody's right to vote if at the end of the day the voter
9 gets exactly what he or she expected would happen, that the
10 funds would not be used in a way that is not authorized under
11 the ballot proposal that was adopted.

12 MR. PATERSON: I, I understand that argument. I
13 think it's somewhat disingenuous (sic) because the defense to
14 that argument when I filed the suit to get them to disgorge the
15 money is, well, the electorate could have approved this usage
16 and you didn't have a vote telling us we couldn't spend it that
17 way. I mean, it doesn't address the right to vote. The right
18 to vote is so fundamental that it's necessary in order to sell
19 the bonds to buyers that can be assured there would be no
20 disgorgement in a subsequent lawsuit, but I can see the defense
21 in the subsequent lawsuit, well, the voters may have approved
22 it. They may well approve this one, I don't know. That's why
23 we have elections. That's why we vote on propositions.

24 THE COURT: All right. Anything else?

25 MR. PATERSON: The vote can occur in either the

1 August or the November election of this year. There's still
2 ample time to place it on the ballot. I also saw that the City
3 Council has delayed its vote to June 20 and I have a right I
4 think to amend my complaint and if it would be, address the
5 concern of the defendants, I could bring the City Council in as
6 an added defendant since they, too, have a role in deciding how
7 TIF money can be captured and used and would have a right --
8 the argument was made and I only had a minute to look at it,
9 but the argument was made that I sued the wrong parties and
10 they said the City Council should be a defendant. Well, I'm
11 more than happy to add the City Council as a defendant. They
12 do have a role under TIF and they do, the DDA and Brownfield
13 Redevelopment do need to go to them for their approval for this
14 catalyst project and for the capture and that can easily be
15 done with leave of the Court or under the court rule, I think I
16 probably have that right.

17 The injunction and the language seemed to be somewhat
18 confused to the defendants, but I am seeking the Court's order
19 that they not be allowed to proceed with the project until they
20 first receive voter approval. That's a fairly straight
21 forward, simple injunctive relief that prevents them from
22 proceeding without considering or taking into account the
23 electorate's vote on the matter. If the Court has any
24 questions of the form of the remedy, I can certainly be happy
25 to address that and --

1 THE COURT: Not just yet. Thank you. Let me hear
2 from Mr. Egan and again I'm going to caution you I may have to
3 interrupt you as soon as I get word that our criminal matter is
4 ready to proceed.

5 MR. EGAN: Absolutely. Your Honor, thank you very
6 much for giving us an opportunity. I apologize for some level
7 of sloppiness in the brief we filed today because we had to get
8 together and wanted to get it to you before 1:30 so we did the
9 very best we could.

10 A couple things have now come up. It's as if this
11 motion's been written on a dry erase board. Now they've said
12 because my first point is what injunction do you want? What's
13 the TRO you seek? They now want an order of the Court
14 prohibiting the projects from proceeding until there's an
15 election. That's not a temporary restraining order. That's
16 not a preliminary injunction. That's a permanent injunction;
17 after a trial, they win. They haven't articulated what the TRO
18 which is what we're here for today is going to say. They
19 haven't provided the order. You can't get a TRO that gives you
20 your final relief, but now he's saying we want a TRO
21 essentially that prohibits anything from happening until
22 there's a ballot, a ballot proposal. That's not a TRO.

23 Secondly, he keeps coming back to the South Haven
24 case which by the way didn't deal with capture issues. You
25 know, I live in Troy. They had a bond issue to put wireless in

1 all the schools. Well, once you do a bond issue for wireless
2 in the schools, I understand you can't use it then to buy
3 buses. That's what the South Haven case is talking about.
4 South Haven didn't deal with capture issues where the
5 Legislature as we laid out in our brief has set out a scheme
6 where entities like my clients are able to capture portions of
7 tax revenue for projects that the Legislature has decided are
8 in the public good and the public interest. As is pointed out
9 in the brief, the Pistons coming downtown alone is going put at
10 least four million dollars of additional income tax revenue
11 into the city of Detroit because the players get taxed. That's
12 a benefit to the citizens of the city of Detroit. They do not
13 explain, umm, so as I said, we have their wanting this TRO in
14 place, but there's no justification for this TRO to be shown.

15 Now they keep talking about the right to vote is
16 fundamental and what I was getting to the South Haven case in a
17 way proves our point. There's a remedy under state law if they
18 want to sue to say as the plaintiffs did in the South Haven
19 case the millage revenue was misapplied, but it's not a 1983
20 claim and it's not a denial of the right to vote. These
21 plaintiffs voted. What they're unhappy about is what happens
22 after the votes were counted and what the taxing authorities
23 did with the money after the ballot was approved. I couldn't
24 find any case suggesting that it's a denial of a right to vote
25 when you're unhappy with what a school board for example does

1 with tax revenue after a millage is passed. There is no --
2 they have to show a likelihood of success on the merits and the
3 South Haven case doesn't deal with 1983 --

4 THE COURT: Isn't there some remedy for the Michigan
5 Attorney General to bring an action if there's a misuse of the
6 funds?

7 MR. EGAN: Absolutely. Absolutely. The point is
8 there's remedies. They're really talking not about denial of
9 the right to vote, they're talking about issues we've got a DDA
10 statute, we have a Brownfield statute, we have a school code.
11 The Legislature has enacted all of these statutes and as we
12 indicated in our brief, the Tax Injunction Act suggests that
13 it's not the province of the federal courts to interfere with
14 that system of state taxation, that that's an issue for the
15 states to decide. Now what they're basically by dressing this
16 up as a right to vote issue, they're trying to federalize and
17 have this Court start supervising the Legislature's
18 comprehensive scheme where the Legislature made the decision
19 that DDAs can capture revenue from school districts or park
20 districts. The Legislature decided they can't do it for
21 millages that are intended solely for libraries.

22 The Legislature is setting the ground rules. They're
23 unhappy with the Legislature's ground rules. It has nothing do
24 with the right to vote. If they want to file an action in
25 Wayne County Circuit Court claiming that this money has been

1 allocated improperly, they're free to do so.

2 THE COURT: All right. I'm going to have to
3 interrupt you because we do need to take up our criminal matter
4 now, so I'll ask the attorneys if they will please vacate the
5 tables and we'll be adjourned in this matter. We'll resume as
6 soon as our criminal matter's completed.

7 (Matter adjourned at 2:27 p.m.)

8 (Matter recalled at 3:58 p.m.)

9 THE CLERK OF THE COURT: Please rise. Court is back
10 in session. You may be seated. The Court recalls case number
11 17-11742, Davis, et al versus Detroit Downtown Development
12 Authority, et al.

13 MR. EGAN: Your Honor, it's been a long afternoon so
14 I'm going to try to brief 'cause I think most of the issues in
15 our brief the Court has hit either in questions to Mr. Paterson
16 or I've been able to address them. Couple of things. I want
17 to correct a partial misstatement. I mentioned that public
18 libraries are exempt from this type of financing by the
19 Legislature. I'm here with Rebecca Navin who is the in-house
20 counsel with the DDA. She tells me under certain circumstances
21 they are, but for example the Legislature has specifically
22 exempted the Detroit Institute of Arts and Detroit Zoo from
23 capture under the TIF program.

24 Number two, you asked the question when did they
25 first become aware of this project, this situation.

1 Mr. Paterson's first answer was January, 2017, but then they
2 shift to some minutes from April, 2017, but that wasn't the
3 Court's question. The question was when did they first become
4 aware of this project. Ms. Navin tells me that the project was
5 actually announced in November of 2016 and Mr. Davis and Mr.,
6 using Mr. Paterson as counsel filed a lawsuit against the DDA
7 under the Open Meetings Act relating to this project, so
8 they've known about it at least since December. Mr. Paterson
9 said January. Here we are six months later and there's
10 suddenly an emergency that required this Court to pick this up
11 immediately.

12 Mr. Paterson also made the statement that there was
13 an adjournment by the City Council of some scheduled action.
14 That's not quite correct. On May 25th, Detroit City Council
15 schedule two matters for consideration. One was today had to
16 do with the Brownfield proposals and on June 20th for the DDA
17 proposals. The Brownfield one was approved today, nothing's
18 been adjourned. The DDA one has always been on June 20th
19 because of a time limit requirement in the statute as to how
20 long that has to be given before it can be acted on.

21 Like I said, we've hit the irreparable harm. On page
22 33 of their brief, they wanted the Court to enjoin the spending
23 of money. That clearly shows that there's not irreparable
24 harm. There's certainly no immediate harm in that nothing's
25 about to happen, this can be dealt with on a more ordinary

1 course because nothing is about to happen today, tomorrow or
2 thereafter.

3 THE COURT: Give me the time table. How long does it
4 take for money to get spent?

5 MR. EGAN: I think it depends on the project. The,
6 umm, my understanding is it depends on the project and what the
7 bonds are for. For example, the Pistons thing is obviously not
8 as far along as the arena. For example, I just saw last week
9 they're in the process of building out the locker room for the
10 Pistons, but see, the Pistons finance this, they actually pay
11 for this. They're then reimbursed, so money that would be
12 approved now, when might it actually be disbursed? Do you
13 know?

14 MS. NAVIN: When the bonds are issued which would be
15 we hope in July.

16 MR. EGAN: It'd be when the bonds are issued which we
17 would hope would be July. So that's when money -- that's when
18 they can then start reimbursing.

19 THE COURT: Now if plaintiffs were right and if it's
20 ultimately determined that the defendants somehow have
21 wrongfully used this money, is there any bar to an order
22 requiring the money to be paid back by the defendants?

23 MR. EGAN: Well, the question is by what court? As
24 we've cited the federal courts, number one, this is solely an
25 action for injunctive relief. That's all they've filed right

1 now. This is not an action for damages and the complaint
2 doesn't even come out and say that that's what they're asking
3 this Court to do. I think they want it held up while there's
4 going to be some kind of ballot, but they haven't talked about
5 anything about having to repay and for the reasons we stated in
6 our brief, that doesn't have anything to do with a right to
7 vote, that has to do with an interpretation of the taxing
8 statutes.

9 THE COURT: No, I understand all of that. I want to
10 know if plaintiffs are right that this is somehow wrongful,
11 whether it's in this court, whether it's in the state court, is
12 there some court that can order that the money be repaid?

13 MR. EGAN: I presume as the Court said, the best
14 example if the Attorney General wanted to bring an action, the
15 logical choice and have money be repaid, the Attorney General
16 certainly has the power and supervises this kind of thing so I
17 think the answer is yes, by the Attorney General. You also
18 have a more fundamental issue because if they're right, the
19 entire millage is theoretically invalid so are you going to
20 start going into also the school portions of it, the park
21 portion of it because I don't think you can just so nicely say
22 well because there was an alleged misstatement on the ballot,
23 this little portion of it is not okay, but the rest of it is,
24 so there's at least an argument that they're opening a can of
25 worms as to whether the Court would have to invalidate the

1 entire bond issues covered by these elections.

2 THE COURT: Go ahead.

3 MR. EGAN: Did that answer the question? I did the
4 best I could. As I said, we haven't had a chance to get as
5 deeply into this as we might have, again because of the quote
6 "emergency" that was urged on everyone that this needed to be
7 dealt with today.

8 I think ultimately the real issue is their right to
9 vote has not been infringed. This case doesn't have to do with
10 the right to vote. That is a, makes it a federal issue. This
11 is an issue of state law for the Attorney General, the state
12 courts and the rest to deal with and there's simply no basis
13 for them to have the federal courts insert themselves into not
14 the election, it's not that people were prevented from voting
15 or ballots were shredded before they were counted. As we said
16 and we cite in our case, garden variety irregularities with a
17 ballot don't even come under federal Constitutional protection.
18 This isn't a challenge to the right to vote. They in fact
19 voted. They weren't -- there wasn't a secret ballot. There
20 wasn't something done. What's done here is plain and simple,
21 they're not happy with what the taxing authority did after the
22 millage went through and that's not a subject of a right to
23 vote and they're casting it that way because, you know,
24 Mr. Davis has brought so many cases in Wayne County, he now has
25 to post a bond before he files a case, okay, let's go over to

1 federal court. He's already sued DDA over this project
2 regarding the Open Meetings Acts and I get back to the laches.
3 If they're aware of this in January, where have they been the
4 last six months? But now yesterday there's an emergency that
5 requires the immediate intervention of this Court so we're
6 having to respond to this with basically hours after they filed
7 their motion rather than the more orderly 14-day process that
8 this Court normally finds for motions. So I think we've
9 covered it unless you've got another question, umm --

10 THE COURT: Not right now.

11 MR. EGAN: I miss anything?

12 MS. NAVIN: (Shaking head)

13 MR. EGAN: Okay. Thank you very much, your Honor.

14 THE COURT: Thank you. Mr. Paterson, you want to
15 respond?

16 MR. PATERSON: Yes, I do. Money raised by tax shall
17 not be used for a purpose other than that for which it was
18 raised without the consent of a majority of the school electors
19 of the district voting on the question at a regular or special
20 school election. How is that not a right to vote? That's
21 where I'm coming from on this case. We're not seeking a refund
22 or anything of the sort, we want the right to vote. That's all
23 this case is about is the plaintiff Wilcoxon's, as an elector
24 of the district, her right to vote.

25 Let me clarify a couple things for the record. The

1 preliminary injunction, TRO that we seek is against the capture
2 of the tax money received through the levy that was voted upon
3 for school purposes. Before they can capture that, with --
4 shall not be used for a purpose other than that for which it
5 was raised without the consent of a majority of the school
6 electors. That's the right that is at issue in this case and
7 the injunction that we seek is don't use that money until
8 you've had a vote of the electorate approving its use. That's
9 the narrowness of it. We're not trying to stop the project,
10 the 18 mill school millage operating revenue and the Wayne
11 County parks millage. We're not trying to stop any of those
12 projects.

13 There is no irreparable harm. As counsel indicated,
14 the private parties are advancing these funds. This millage is
15 strictly proposed for a reimbursement of those costs. There's
16 nothing urgent about the reimbursement since the money's being
17 spent today and there's no accounting of that. At the
18 earliest, counsel indicates perhaps July of this year. Well,
19 if it's October, then it's October, but we have an August
20 primary and we have a November primary at which these
21 defendants can act with the consent of a majority of the school
22 electors. Electors, school electors that have approved a
23 school operating millage and they want to propose and it's
24 perfectly legitimate for them to propose capturing some of that
25 millage and using it for the purposes that they intend to use

1 it for, but they can't do it in the words of the statute,
2 380.1216 of the Michigan Revised School Code, money raised by
3 the tax shall not be used for purpose other than that for which
4 it was raised without the consent of a majority of the school
5 electors of the district voting on a question at a regular or
6 special school election. That's what we're seeking. We're
7 trying to enforce that. The -- that's Ms. Wilcoxon's case.

8 Mr. Davis has raised the issue himself with respect
9 to the Brownfield vote and the parks, the Wayne County parks
10 millage which was the 2016 election that I see from the recess
11 and he's trying to follow the South Haven case which was the
12 Michigan Supreme Court that said that public bodies can't use
13 millages raised, capture millages raised for a different
14 purpose without a vote of the people. That's the Michigan
15 Supreme Court's interpretation of the General Property Tax Act.
16 That's their understanding and how they read that using
17 statutory construction. So that applies as well to the school
18 tax, but specifically the Revised School Code applies to the
19 school tax as well, so the authority rests in the General
20 Property Tax Act and in the Revised School Code as interpreted
21 by the state's highest court and it indicates in both cases
22 that the electorate is entitled to a vote before that money can
23 be captured, before that money can be used for a different
24 purpose. That's all that the plaintiffs are seeking here is
25 the right to vote and to seek the electorate's approval of this

1 change in use and change in purpose of the millage. The
2 project isn't going to stop. No one's trying to stop the
3 project. The project's a wonderful project. Everybody's
4 endorsed that project and the electorate should have that
5 opportunity as well.

6 She's -- plaintiff Wilcoxon is simply seeking to
7 exercise her fundamental right to vote on the question of
8 whether the defendants should be permitted to capture the tax,
9 the tax that was voted for school operating purposes, the 18
10 Detroit Public School, 18 mill vote and now they're proposing
11 to use it for a different purpose. Plaintiff wishes to vote on
12 it. Section 380 of the -- 388.1615 of the Revised School Code
13 and the Michigan General Property Tax Act, 211.24f, as
14 interpreted by the Michigan Supreme Court in South Haven
15 clearly indicates that she as part of the electorate and
16 Mr. Davis as part of the electorate have a right to vote on
17 before this may be used. The language is shall not be used
18 without the consent of a majority so that it seems clear that
19 the vote needs to come before they're entitled to use the
20 millage so the extent of the TRO and preliminary injunction
21 would be to enjoin them from using for a different purpose any
22 millages and not capturing them without first obtaining the
23 vote of the plaintiff and the rest of the electorate.

24 The parks millage rests not on the school code
25 because it's the parks millage, it rests on the General

1 Property Tax Act 211.24f and the Court's interpretation of
2 South Haven which I think I read to you earlier that the
3 taxpayers can be lulled into approving a project that they
4 support and then the public body if it turned around and used
5 it differently would be a violation of what was approved in the
6 purpose of 24f putting the purpose of the tax into the ballot
7 and that's where we seek to enforce that in the, in the
8 Brownfield case.

9 The right to vote is the issue. It's -- there's no
10 remedy. We're not seeking tax refunds or anything of that
11 sort, it's the right to vote. That's solely what this case is
12 about. It is not seeking to have the money refunded. The
13 money was voted in. The plaintiff voted in favor of the school
14 operating millage. This is strictly a proposal to change the
15 use of that and she just wants that right to vote. She doesn't
16 want a refund. That's not what this case is about. That's
17 just misdirection that really doesn't address the right to
18 vote.

19 The case as it stands, I guess I agree with counsel,
20 the urgency and I appreciate the Court having scheduled this,
21 but I also see that and I'd like a chance to respond to the
22 brief that was filed in response to our motion and give the
23 Court an opportunity to consider those issues raised by them in
24 that brief. I would also like the opportunity to add the City
25 Council as a defendant and perhaps the City since I see that in

1 their brief that they've raised maybe these aren't the right
2 parties. I think they are because they are the ones that are
3 attempting to utilize and capture the tax funds that were
4 levied by the millages, but if I need to add to complete the
5 parties that have a role in this, I can add the City Council.
6 I'd be happy to do that almost immediately. I also would like
7 the opportunity to review in some detail and address the
8 arguments raised in the defendant's brief. The Court has any
9 questions?

10 THE COURT: What is your view as to when the right to
11 vote is actually going to be infringed on?

12 MR. PATERSON: If the City Council proposes to
13 approve the catalyst project and attempt to sell bonds pursuant
14 to that without a vote of the people, I think then the people's
15 right to vote has been infringed upon, upon the approval by the
16 City Council without scheduling first a vote. I don't know how
17 they can sell the bond when it's going to violate Michigan law,
18 but that's where I'm anticipating --

19 THE COURT: Is that when it happens, when they sell
20 the bonds? When they approve it before hand?

21 MR. PATERSON: Well, the approval will enact the
22 capture I believe, your Honor, and that's what I think the City
23 Council determines is that we can capture this millage, in this
24 case the school operating millage, the Wayne County parks
25 millage. That resolution purports to capture that money so

1 that they have a basis for then selling the bonds. I believe
2 that's how the bond sale works. At that point, once they sell
3 the bond, they've got a contract through the bond with the
4 buyer of the bond and they've said we've dedicated this
5 revenue. At that point they're in a box because if this is
6 truly illegal because they didn't receive the vote of the
7 people, they have a problem I think with their bond buyer at
8 that point, but that's why it's urgent. We've got an August
9 primary. There's time to put anything on the ballot at this
10 point in time. November if they're wanting to do that instead,
11 that's their decision. We're not purporting to say put us on
12 the August ballot.

13 THE COURT: Well, I'm trying to find out what is the
14 operative date under your theory. Is it when they sell the
15 bonds?

16 MR. PATERSON: No, I think it's when they resolve to
17 capture the revenue.

18 THE COURT: When they resolve to capture?

19 MR. PATERSON: When the City Council passes a
20 resolution approving the catalyst expansion plan capturing the
21 school operating millage and the parks' millage.

22 THE COURT: Well, I heard one approval took place
23 today. There's another approval scheduled to be voted on on
24 June 20?

25 MR. PATERSON: Yeah. The approval today as I

1 understand it with respect to the Wayne County parks with the
2 redevelopment authority didn't capture the parks' millage
3 today. I think today was a tax abatement, rezoning issues of
4 that nature. I believe that the June 20th hearing is where
5 they will make the attempt to capture.

6 THE COURT: So in your view, June 20 is the operative
7 date?

8 MR. PATERSON: I believe it is because -- well,
9 whenever the effective resolution, if they adopt a resolution,
10 I'm not quite sure when it might become effective. Sometimes
11 legislation has a delay before it's effective, but I think
12 that's the significant event for capturing the millages.

13 THE COURT: Okay. Anything else?

14 MR. PATERSON: No.

15 MR. EGAN: A couple quick points. I've been doing
16 this for a few years. A TRO I understand lasts until you have
17 a preliminary injunction hearing. A preliminary injunction
18 lasts until you have a trial. He once again just asked the
19 Court to enjoin the capture of revenue until an election is
20 held. We are entitled to have a trial on that issue before
21 that issue which is a permanent injunction is addressed. This
22 is supposedly a TRO.

23 Now he wants time to respond to our brief. Your
24 Honor, we didn't ask that this be done on an emergency basis.
25 Normally they could have filed a motion for a preliminary

1 injunction, the Court would have set a briefing schedule, we
2 would have filed the brief next week or the week after and then
3 they get to do a reply brief. Well now that we've filed,
4 stayed up all night and early morning to get this thing out,
5 now they want to respond so there really wasn't an emergency
6 and now they want to respond.

7 It's again a dry erase board. It depends whatever
8 they wish to say. He says an injunction, they want us to be
9 enjoined from capturing revenue. We have been capturing
10 revenue for 40 years using this method of financing. That
11 whole Little Caesars Arena, you're talking 250 million dollars
12 of bonds in 2014 done this same way. All that happened is the
13 Legislature's agreed to extend it for another six years, that
14 same program, but this isn't anything new. The DDA has been
15 capturing revenue for the purpose of this arena since 2014 and
16 for other projects before that. Where were they? To come in
17 and now they want us to stop and there's the obvious question,
18 if we can't capture revenue, well there's bonds that have
19 already been issued in connection with Little Caesars Arena so
20 we can't capture revenue not only for this new project, but how
21 will the entities pay the debt service on the bonds that have
22 already been issued which leads us to another issue they've
23 neatly avoided. Under Rule 65 if you get an injunction, you
24 can be required to post a bond. Well, the bond to shut these
25 projects down which essentially is what they're doing 'cause we

1 no longer have revenue would be millions of dollars and I doubt
2 that Mr. Davis and Ms. Wilcoxon have the financial wherewithal.
3 So for them in a lot of ways this is a bit of a game and it's
4 semantics, not a right to vote. For us, it's real business.
5 We have projects that are underway to benefit the city. We are
6 proceeding with those projects for the benefit and they can't
7 keep changing around what they're asking the Court to do.
8 They're clearly asking the Court to issue a permanent
9 injunction 24 hours after the lawsuit was ordered. I think the
10 Court should just deny the whole thing, set up a preliminary
11 injunction hearing if you wish and let everybody brief. We can
12 get witnesses, affidavits and, but we're entitled to a trial if
13 they're going to actually try to hold this up until there's an
14 actual election.

15 THE COURT: Well, what would there be to try here?
16 Are these just legal issues about what does the legislation say
17 and what does the ballot proposal say or are there factual
18 issues?

19 MR. EGAN: There's a lot of factual issues because
20 opinions were obtained in connection with the financing, what's
21 done, what date, how it works, what the pieces are. This is
22 extremely complicated and again it's not the right to vote.
23 They voted. They're asking the federal courts to supervise
24 municipal finance in the state of Michigan because they're
25 unhappy with what taxing entities did with the money and the

1 courts are clear that's not the federal court's job, it's the
2 state court's job.

3 There's not a 1983 issue here. They were allowed to
4 vote. What they would have this Court do is start supervising
5 every time a DDA and there's a lot of them in this state, the
6 federal courts are going to start supervising how they spend
7 their money and where they get their recapture from and the
8 quality of the ballot proposals. That's a very rough slippery
9 slope.

10 This isn't about the right to vote. They haven't
11 given us one case that says a 1983 claim is implicated here.
12 It's not there and your Honor, it's simply not appropriate to
13 issue injunctive relief. We'll deal with the rest of this
14 lawsuit including the final relief in the ordinary course after
15 we file motions to dismiss and the like, but the emergency
16 relief they ask for today is simply not called for.

17 THE COURT: All right. Mr. Egan, you prepared your
18 response on a very short time schedule. Was there something
19 more you wanted to say in writing?

20 MR. EGAN: Your Honor, there's a lot more issues.
21 We -- as you see we didn't even get affidavits -- excuse me.
22 We didn't even have time to get affidavits for the underlying
23 facts. The client has files. There is bond opinions on this.
24 We haven't gone through the statutory provisions. There's a
25 lot of law and facts that we simply couldn't do considering the

1 motion was filed after hours last night. We just didn't have
2 time. There's a lot more we would like to brief and address
3 with the Court.

4 THE COURT: What's the earliest bonds will be sold?
5 You mentioned July as a time frame? Do you have a more
6 definite date within that month?

7 MR. EGAN: Your Honor, we have a sizeable debt
8 service payment due July 15th, so -- July 1st, excuse me, and
9 the fact is this effects all the bonds, not just necessarily
10 the ones they're talking about if they get this type of
11 injunction which I still think is not needed at this point, but
12 July 1st is certainly a key date. Is that a fair statement?

13 UNIDENTIFIED SPEAKER: Um-hmm.

14 THE COURT: All right. Well, we have a very busy
15 schedule and I think what I can do is set this up for a hearing
16 on Friday, June 16th.

17 MR. EGAN: Your Honor, I understand Ms. Navin is not
18 going to be here and actually I won't be here either. Is there
19 anything chance of having it any later? Plus I know
20 Mr. Paterson --

21 THE COURT: I can make it earlier.

22 MR. EGAN: We want to file another brief.

23 THE COURT: I know. I was going to give you until
24 the 13th to file it.

25 MR. EGAN: But can we at least have the hearing on a

1 later date?

2 MR. PATERSON: Your Honor, would this be an
3 evidentiary hearing?

4 THE COURT: I don't know. I want to see what
5 Mr. Egan files. All right. Well, can you get me your brief
6 before the 13th?

7 MR. EGAN: I think that's going to be difficult.
8 That's basically a week.

9 THE COURT: Um-hmm. Well, I can squeeze you in on
10 the 19th I believe. That would be Monday the 19th.

11 MR. EGAN: Your Honor, that really doesn't help us
12 with the brief. We've got quite a bit to do on this because
13 this started yesterday. They've known about this for six
14 months. They filed now and now we're all jammed up including
15 the Court and I appreciate what the Court's saying, but I'd at
16 least like to get two weeks to brief this. On a normal motion
17 you get two weeks and if they would have filed this two weeks
18 ago, we wouldn't be having this discussion, but they waited and
19 I'll do obviously what the Court wants, but --

20 THE COURT: Well, tell me how many affidavits do you
21 think you need and what are they going to cover?

22 MR. EGAN: I don't really know because we haven't
23 gotten deeply enough into this because this motion was filed
24 last night, the lawsuit was filed literally yesterday morning
25 and I really don't know. I know we want to talk -- we need to

1 investigate basically the legal basis of this offering. I know
2 there were opinions from Council. There's a lot of facts
3 regarding this and we literally couldn't get that process
4 really started for today. As I said, they've been sitting on
5 this for a long time. I'd like to get some time to respond.
6 They've been planning this for quite awhile.

7 THE COURT: Well, I'm going to have the hearing on
8 the 19th and I will give you until the 14th to give me your
9 response beyond what you've already given me. I assume this is
10 going to be a supplement of some kind? You're not going to
11 cover the same ground?

12 MR. EGAN: Actually I think we're going to probably
13 redo it as if we had covered --

14 THE COURT: Okay.

15 MR. EGAN: -- so that it's comprehensive.

16 THE COURT: All right, then that's fine.

17 MR. EGAN: That way you don't have to look at two
18 different documents.

19 THE COURT: That's fine. All right, so your new
20 response will be due by the 14th and I'll set this up for a
21 hearing on the 19th. Now I'm going to set the hearing for 9:00
22 on the 19th, but I will tell you that we have a trial scheduled
23 the week of the 12th which I am told is going to go and I will
24 let everybody know by noon on the 16th whether that day,
25 whether that time is going to change on the 19th. I may push

1 you into the afternoon so just keep that whole day available.
2 We'll also let you know whether we think we need to hear
3 testimony on the 19th. Okay. What else? Anything else?

4 MR. PATERSON: Your Honor, may -- the plaintiffs
5 would like the opportunity to file a response to their brief or
6 a reply to their brief. I believe it can be done by the 16th
7 although I realize that's a Friday.

8 THE COURT: Well, I'll need it by 5:00 p.m. on the
9 15th.

10 MR. PATERSON: 15th?

11 THE COURT: 5:00 p.m. on the 15th. All right and
12 plaintiff went overboard on the pages. We have a 25-page limit
13 so as far as the response goes, whatever the new defense
14 response will be, that will be limited to 30 pages and the
15 reply is going to be limited to 10 pages. Don't file anything
16 beyond the page limits allowed by the court rules. Without
17 getting an order from me in the future, I'm just going to be
18 striking things.

19 MR. PATERSON: Apologize, your Honor.

20 THE COURT: All right. Anything else?

21 MR. EGAN: No, your Honor. Thank you very much.

22 THE COURT: Okay. That concludes our hearing.

23 (Hearing concluded at 4:39 p.m.)

24 -- --- --

25

C E R T I F I C A T E

I, David B. Yarbrough, Official Court
Reporter, do hereby certify that the foregoing pages
comprise a true and accurate transcript of the
proceedings taken by me in this matter on Tuesday, June
6th, 2017.

6/8/2017

Date

/s/ David B. Yarbrough

David B. Yarbrough,
(CSR, RPR, FCRR, RMR)
231 W. Lafayette Blvd.
Detroit, MI 48226